



THOMAS F. REILLY  
ATTORNEY GENERAL

## THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108-1598

(617) 727-2200  
<http://www.ago.state.ma.us>

June 8, 2006

Mary Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, Second Floor  
Boston, MA 02110

RE: Inquiry to Establish Billing and Termination Practices, D.T.E. 06-8

Dear Secretary Cottrell:

On April 7, 2006, the Department of Telecommunications and Energy ("D.T.E." or "Department") opened a Notice of Inquiry ("NOI") to establish Retail Billing and Termination Practices ("Revised Practices") for telecommunications carriers operating in Massachusetts, and to develop and implement updated billing and termination practices to be observed by all telecommunications carriers offering retail service in Massachusetts.

According to the NOI, the Department will review the current billing and termination practices ("Existing Practices"), originally established in *NYNEX-New England Telephone Company*, D.P.U. 18448 (1977), and will amend its consumer protection provisions to reflect the current competitive marketplace. In addition, the Department stated that it will evaluate whether to apply the consumer protections afforded by the Revised Practices to telecommunications services and providers not covered under the Existing Practices (e.g., in-state long-distance service, pre-paid services, and service to small business customers (i.e., those with three lines or less) as well as to residential customers). The Department will also consider whether it should require minimum consumer protections for voice service in Massachusetts, regardless of how that service is delivered, and to what extent the Department should expand the

Revised Practices to apply to emerging/alternative technologies (e.g., Voice over Internet Protocol (VoIP), wireless).

Pursuant to deadlines established by the Department, the Attorney General submits this letter as his initial comments.

## **I. INTRODUCTION**

The Department is required to ensure just and reasonable rates for adequate service, and has enacted many rules, guidelines and principles over the years to achieve those ends. Currently, any provider of intrastate telecommunications services in Massachusetts must comply with billing and termination practices similar to those adopted by the Department in *NYNEX-New England Telephone Company*, D.P.U. 18448 (1977). The practices relate to billing and termination standards, security deposits and guarantees, termination of service, resolution of complaints and disputed claims, and deferred payment plans. *See id.*

The Existing Practices were the product of an adjudicatory proceeding by the Department into the policies and practices of New England Telephone and Telegraph Company ("NET"). *See id.*, p. 2. The Department conducted an investigation into whether the practices of the common carrier were unjust, unreasonable, unsafe, improper, or inadequate, and then determined the just, reasonable, safe, adequate, and proper regulations and practices that should be in force. *Id.*, p. 2, *citing* G. L. c. 159, § 16. Following a series of hearings, the Department held that several of NET's existing policies were "unjust, unreasonable...or inadequate." *Id.*, p. 4.

Based on the evidentiary record, the Department developed the Billing and Termination Practices as they currently exist. The Department has repeatedly reaffirmed the important role of the Existing Practices in protecting consumers, and conditioned entry into the telecommunications services market upon the entrant's agreeing to abide by the Existing Practices. When the Department eliminated entry regulation for telecommunications carriers, it invoked the Existing Practices to reassure parties that it was just as committed to consumer protection as it was to promoting competition. *See Investigation By The D.P.U. On Its Own Motion Into the Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts*, D.P.U. 93-98, p. 12 (1994).<sup>1</sup> The consumer protections set forth in the Existing Practices remain essential to the relationship between service provider and consumer.

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<sup>1</sup> "Although the Department is committed to promoting competition in telecommunications, we are not abandoning the concept of consumer protection nor are we abandoning our responsibility to follow the statutory requirement to ensure just and reasonable rates. Rather, we find in this case that current market forces, statutory requirements, and the Department's tariff regulations, notice requirements, and consumer complaint resolution process, are sufficient to ensure not only that rates are just and reasonable but that there is adequate consumer protection for interexchange, competitive access, and AOS services, absent the regulation of entry into these markets."

### III. DISCUSSION

A. **The Department's Premise for Updating the Billing and Termination Practices, That Telecommunications Service Markets Are Highly Competitive, Is Both Unsubstantiated and Incorrect.**

The Department has not substantiated with record evidence its premise that the telecommunication markets are highly competitive. The Department cites today's "highly competitive" intraLATA, interLATA, and local exchange markets as the reason for updating the Existing Practices. *Order Opening Notice of Inquiry*, D.T.E. 06-8, p. 3 (April 7, 2006). The Department, however, provides no evidence to indicate that the market is actually competitive. In its most recent examination of competition in the market for residential telephone service, the Department indicated that minimal competition exists when it classified Verizon as a "dominant carrier in Massachusetts." *Investigation Into Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon*, D.T.E. 01-31 Phase II, p. 99 (holding Verizon subject to regulatory requirements that other, non-dominant carriers, would not be subject to). In this same proceeding, the Department found that demand for Verizon's basic residential service "is very inelastic, and very likely close to zero." *Id.*, p. 74. The Department also found that wireless and cable telephone do not provide significant competition. *Id.* ("substitutes for Verizon's basic residential service [e.g. wireless and cable telephony]... have not significantly altered the price elasticity for basic residential service"). If the Department now concludes that the marketplace is "highly competitive," it must substantiate this new position.<sup>2</sup>

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*Investigation By the D.P.U. On Its Own Motion Into the Regulatory Treatment Of Telecommunications Common Carriers*, D.P.U. 93-98, p. 11.

<sup>2</sup> To substantiate its position that telecommunications markets are highly competitive, the Department should hold evidentiary hearings.

In fact, the Department's premise, that the telecommunications marketplace is highly competitive, is incorrect. Verizon is the dominant carrier in Massachusetts for local residential telephone services. The FCC conducted a survey of local Massachusetts competition that shows Verizon holds a 79% share of the local residential market.<sup>3</sup> With Verizon controlling 79% of the market, the market certainly cannot be described as "highly competitive."<sup>4</sup>

Verizon's only "competition" comes from wireless, cable, and Voice over Internet Protocol ("VoIP") providers. Although cable, VoIP, and wireless services may be substitutes for wireline service, they do not exert meaningful market pressure. *See* 20 FCC Rcd. 18433, ¶ 19, n. 276 ("the record does not present credible evidence that mobile wireless services have a price constraining effect on all consumers' demand for primary line wireline services"). The Department itself has found that these alternatives have a negligible effect on demand for Verizon's wireline service. *See* D.T.E. 01-31 Phase II, p. 74 ("we are persuaded that the alternative services that have emerged as substitutes for Verizon's basic residential service (e.g., wireless and cable telephony) also serve as substitutes for Verizon's usage and other services, and have not significantly altered the price elasticity for basic residential service relative to these other services."). Wireless voice service does not represent meaningful competition to the dominant wireline provider, and wireless service is not a substitute for wireline service. *See* 20 FCC Rcd 18433, ¶ 90, n. 268. (finding most segments of mass market unlikely to rely on mobile wireless services in lieu of wireline local service); ¶ 91 (noting that nationally only six percent of households rely on wireless service for all their communication needs). VoIP also does not represent meaningful competition, since only about three and a half percent of U.S. households use VoIP as their home phone. Dan Frommer, *Vonage Dominates Home VoIP Market*, *Forbes*, March 16, 2006. Wireline's stiffest competitor for voice services, cable telephony, does not represent meaningful competition, since there are only about five million cable telephony subscribers nationwide. FCC, *Local Telephone Competition Status as of June 30, 2005*, Table 5 (April 2006). These numbers do not represent a meaningful competitive market.

For the foreseeable future, emerging technology will not exert meaningful competitive pressure on Verizon. Therefore, "competition" does not supply an adequate basis to justify a modification of consumer protections relating to billing and termination practices.

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<sup>3</sup> *See* Federal Communications Commission, *Local Telephone Competition: Status as of June 30, 2005*. The FCC found Verizon had 3,245,760 customers to competitors' 1,089,068 customers. Of Verizon's customers, about 76% were residential customers. Of competitors' customers, about 48% were residential customers.

<sup>4</sup> In considering the recent Verizon-MCI merger, the FCC opined that Verizon's market share "suggests potentially problematic levels of concentration." *In the Matter of Verizon Communications, Inc. and MCI, Inc.*, 20 FCC Rcd. 18433, ¶ 103. (November 17, 2005).

**B. The Department Should Maintain Effective Consumer Protections and Follow Its Guiding Principles in the Rulemaking Proceeding.**

Consumer protections are vital, even in a competitive market, to ensure that there is fair competition and that consumers have the information they need to make an informed choice when selecting their service provider. The Department has set forth sound principles as a guide for updating the billing and termination practices:

- Customers must receive certain basic consumer protections from their telecommunications providers, even in a competitive marketplace.
- Customers must receive accurate information in order to make informed decisions on their own behalf.
- Customers must have adequate notice of any changes to the terms and conditions of their service.
- Customers must have adequate time to take action where action is required, and some classes of customers may require additional time to act.
- The Department's mission is not to absolve any party of the consequences of its actions.
- Carriers and their customers are responsible for the consequences of their actions.
- The Department will resolve disputes between carriers and their retail customers upon request.

D.T.E. 06-8, p. 4.

The Attorney General recognizes the need for aggressive consumer protection in the telecommunications industry. The Attorney General has brought actions against telecommunications companies for unfair and deceptive acts, including unfair and deceptive advertising, billing, and marketing practices, and will continue to do so when necessary and appropriate. *See, e.g., Com. v. AmCan Enterprises, Inc.*, 47 Mass. App. Ct. 330, 340 (1999) (finding violation of G. L. c. 93A for sending misleading and deceptive solicitations to consumers); *Lowell Gas Co. v. Attorney General*, 377 Mass. 37, 54 (1979) (holding Attorney General could charge public utility with unfair or deceptive acts or practices under G. L. c. 93A).

The Attorney General has investigated and resolved a number of consumer protection issues with telecommunication carriers:

- Advertising misrepresentations, deceptive marketing, termination of services, and unfair billing practices by three wireless carriers, Cingular Wireless (*Cingular Wireless*, No. 04-3227C (Mass. Super. Ct. 2004)), Sprint PCS (*Sprint PCS*, No. 04-3228E (Mass. Super. Ct. 2004)), and Verizon Wireless (*Verizon Wireless*, No. 04-3226B (Mass. Super. Ct.

2004)). Those cases included issues concerning coverage in advertisements, failure to disclose material terms at the point of sale, termination of services made burdensome, and failure to separate certain taxes and fees in billing.

- Misbilling of consumers by AT&T in 2005. Consumers who were not AT&T customers were charged and AT&T customers overcharged for their calling plans. *AT&T*, No. 05-0502E (Mass. Super. Ct. 2005).
- Deceptive advertising and poor customer service by Comcast in 2006. This included Comcast's failure to clearly and conspicuously disclose the pricing of their products and services in their advertisements and often treated customers poorly. *Comcast*, No. 06-1111E (Mass. Super. Ct. 2006).

As these cases show, it is important not to lessen consumer protections in today's retail telecommunications market. As alternative technologies develop, the Attorney General will work with the Department to fill any regulatory gaps that may exist with technologies not covered by the Existing Practices.

In its NOI, the Department sets forth principles to guide this rulemaking proceeding. These principles guided the Department when it established the Existing Practices, and they have guided the Attorney General's enforcement of consumer protection laws. It is essential that the Department stay true to its Guiding Principles. Even in a competitive environment, the consumer protections afforded by these Guiding Principles are essential for all Massachusetts local service residential and small commercial customers.

### **Conclusion**

Just as in 1977, when the Department adopted the current Residential Billing and Termination Practices, local residential service is dominated by one carrier – Verizon. No record evidence has been introduced in this proceeding to demonstrate that there is a competitive market for local residential service. There is also no record evidence that “current market forces” justify modifying the concept of consumer protection or the Department’s statutory requirement to ensure just and reasonable rates. Residential and small business customers have no or few alternatives to basic telephone service or its functional substitute. Therefore, the Department should not change the Existing Practices.<sup>5</sup>

Respectfully submitted,

THOMAS F. REILLY  
ATTORNEY GENERAL

/s/ Jonathan B. Engel  
By: Jonathan B. Engel  
Geoffrey Why

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<sup>5</sup> “These [billing and termination] practices are deemed appropriate given the need for safeguards in the residential market, which relies upon access to emergency and other services.” *Commonwealth Electric Co.*, D.P.U. 94-65 (March 28, 1995) (rejecting tariff proposal that did not include adequate billing and termination practices).